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**Everman Electric Company, Inc. and International
Brotherhood of Electrical Workers, Local Union
No. 903, AFL–CIO.** Case 15–CA–14261

May 16, 2001

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND WALSH

On October 1, 1999, the National Labor Relations Board issued a Decision and Order in this proceeding directing the Respondent, Everman Electric Company, Inc., to take certain affirmative action, including, *inter alia*, making Wallace Barnes, Ricky Chuter, Larry Herring, Earl E. Johnson, Porter A. Lee, Roger Maxson, Andy Scara, Frank J. Shrader, Joseph Versiga, John D. Welch, and David I. Wozencraft whole for any loss of pay or benefits they may have suffered as a result of the Respondent's unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

On May 18, 2000,¹ the Regional Director approved a stipulation in which the Respondent waived the right to contest the propriety of the Board's Order but reserved the right to a compliance hearing to resolve any disputes concerning the amount of backpay due.

A controversy having arisen over the amount of backpay due under the terms of the Board's Order to Wallace Barnes, Ricky Chuter, Larry Herring, Earl E. Johnson, Porter A. Lee, Roger Maxson, Andy Scara, Joseph Versiga, and John D. Welch, on June 7 the Acting Regional Director for Region 15 issued a compliance specification and notice of hearing alleging the amount of backpay due and notifying the Respondent that it must file an answer complying with Section 102.56 of the Board's Rules and Regulations.² Under Section 102.56, the Respondent's answer to the compliance specification was due on June 28.

On June 28, the Respondent filed a response to the compliance specification, generally denying each of its allegations and asserting certain defenses. By letter dated July 19, the General Counsel notified the Respondent that its June 28 response did not constitute an appropriate answer under Section 102.56 and that, if an adequate answer was not filed by August 2, summary judgment would be sought.

On September 12, the General Counsel filed with the Board a Motion for Summary Judgment, in which he

argued that the Respondent failed to file an answer or explain its failure to do so. On September 29, the Board issued a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted.

On October 9, the Respondent filed a response to the Motion for Summary Judgment in which it argued that its June 28 response to the compliance specification constituted a sufficient answer under Section 102.56. In the event, however, that the Board determined otherwise, the Respondent appended to its response a supplemental answer to the compliance specification.

On October 19, the General Counsel filed an answer to Respondent's response to Motion for Summary Judgment, arguing that the June 28 response did not constitute a valid answer, and that, in its October 9 supplemental response, the Respondent sought to file a late answer, which should not be accepted.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

Ruling on Motion for Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states, in pertinent part:

(b) Contents of answer to specification.—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.—If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by

¹ All dates are in 2000, unless otherwise indicated.

² Although discriminatees Frank J. Shrader and David I. Wozencraft are also listed in the compliance specification, with amounts owed them, they were not named in the May 18 stipulation as individuals about whom the Respondent and the Board have been unable to reach agreement. Thus, the parties apparently have reached agreement as to their backpay.

paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

Positions of the Parties and Analysis

In the compliance specification, the General Counsel set forth the backpay period for each discriminatee,³ established the formula for calculating the discriminatees' gross backpay; tabulated gross backpay; deducted net interim earnings;⁴ and arrived at net backpay figures.

In its June 28 response, the Respondent, among other things: denied "each and every allegation contained within the Board's compliance specification"; claimed that it could not respond to the General Counsel's calculations because it did not have the documentation on which the General Counsel relied;⁵ and asserted that it offered reinstatement to the discriminatees on April 6, 1998 and that, of the five who accepted the offer, Wallace Barnes, Porter Lee, Earl Johnson, John Welch, and Frank Shrader worked on April 22 and 23, 1998, after which they went on strike, walked off the job, and never returned. The Respondent also contended in its response that it again offered each of the alleged discriminatees employment by letter dated June 30, 1999, and that no discriminatee accepted employment.

On July 19, the Region sent the Respondent all the documents that the Respondent submitted in this case, as well as copies of interim earnings and expenses information submitted by the discriminatees. The July 19, 2000 letter also advised the Respondent that the June 28 response did not constitute an adequate answer.

Following the General Counsel's Motion for Summary Judgment, the Respondent filed a response to the motion on October 9, as well as a supplemental answer to the compliance specification and notice of hearing. In that supplemental answer, the Respondent denied the General Counsel's backpay calculations to the extent that the Respondent asserted that the backpay period of the dis-

criminatees should be "reduced as of April 6, 1998, which is the date the alleged discriminatees were offered and refused employment" with the Respondent.⁶ The Respondent also asserted in its supplemental answer that it lacked information on which to either admit or deny the amounts of net interim earnings of the discriminatees.

Having considered the matter, the Board has decided to grant the General Counsel's Motion for Summary Judgment except as follows:

In its June 28 response to the backpay specification, the Respondent generally denied the allegations in the compliance specification. Although such a general denial is insufficient as to matters within the Respondent's knowledge and control, it is sufficient as to issues of interim earnings (i.e., interim earnings and expenses). See, e.g., *Dews Construction Corp.*, 246 NLRB 945, 946-947 (1979), *enfd.* 578 F.2d 1374 (3d Cir. 1978); *Aneco, Inc.*, 330 NLRB No. 152, slip op. at 1 fn. 2, 2 fn. 3 (2000). Accordingly, we deny summary judgment as to these issues.

Contrary to the General Counsel, we further accept and consider the Respondent's October 9 supplemental answer. As set forth in *Standard Materials, Inc.*, 252 NLRB 679 (1980), the Board has held that, even in the absence of an amended backpay specification, a respondent may amend its answer prior to a hearing in the compliance proceeding. See also, *Vibra-Screw, Inc.*, 308 NLRB 151, 152 (1992).

Considering the supplemental answer, we find that the Respondent has preserved its defense as to the issues of interim earnings and expenses. We further find that, in the supplemental answer, the Respondent has specifically denied the backpay cutoff date as to discriminatees Wallace Barnes, Larry Herring, Porter Lee, Earl Johnson, Roger Maxson, and John Welch, arguing that backpay should toll on April 6, 1998,⁷ instead of either April 23, 1998, or April 6, 2000, as asserted in the compliance specification. (See fn. 3, *supra*.) We further find that the Respondent's denial of the alleged backpay cutoff date for these discriminatees satisfies the requirements of Section 102.56. Specifically, we find that the supplemental answer is "sufficiently specific to raise a litigable issue of fact regarding the closing date of the backpay period and that this issue is best resolved by a hearing." *Aneco, Inc.*, *supra*, 330 NLRB No. 152, slip op. at 3.

Accordingly, we shall deny the General Counsel's Motion for Summary Judgment as to those allegations of the compliance specification pertaining to interim earnings and expenses of discriminatees Wallace Barnes, Ricky Chuter, Larry Herring, Earl E. Johnson, Porter A. Lee, Roger Maxson, Andy Scara, Joseph Versiga, and John D.

³ The compliance specification set forth the following backpay periods for these discriminatees:

Wallace Barnes	February 1, 1997–April 23, 1998
Ricky Chuter	March 20, 1997–April 6, 1998
Larry Herring	January 31, 1997–April 6, 2000
Earl E. Johnson	January 31, 1997–April 23, 1998
Porter A. Lee	February 1, 1997–April 23, 1998
Roger Maxson	May 27, 1997–April 6, 2000
Andy Scara	January 27, 1997–April 6, 1998
Joseph Versiga	February 4, 1997–April 6, 1998
John D. Welch	January 27, 1997–April 23, 1998

⁴ As set forth in the compliance specification, "net" interim earnings are the difference between interim earnings and interim expenses.

⁵ In arguing that it needed this documentation, the Respondent noted that the original backpay figures proposed by the Region differed markedly from those subsequently set forth in the compliance specification.

⁶ As noted, above, the compliance specification does cut off backpay for the following discriminatees on April 6, 1998: Ricky Chuter, Andy Scara, and Joseph Versiga.

⁷ The Respondent attached to its supplemental answer certain exhibits in support of its position.

Welch, and with respect to the backpay cutoff date for discriminatees Wallace Barnes, Larry Herring, Porter Lee, Earl Johnson, Roger Maxson, and John Welch. In all other respects, we grant the Motion for Summary Judgment.

ORDER

IT IS ORDERED that the General Counsel's Motion for Summary Judgment is granted except as to the issue of the interim earnings and expenses of discriminatees Wallace Barnes, Ricky Chuter, Larry Herring, Earl E. Johnson, Porter A. Lee, Roger Maxson, Andy Scara, Joseph Versiga, and John D. Welch, and with respect to the backpay cutoff date for discriminatees Wallace Barnes, Larry Herring, Porter Lee, Earl Johnson, Roger Maxson, and John Welch.

Specifically, the Motion for Summary Judgment is granted as to the allegations in paragraphs 1, 2(b)-(f), 3(a), 4(a), and 5 of the compliance specification, all of which allegations the Respondent has admitted in its supplemental answer. Additionally, the motion is granted as to the allegations in paragraphs 7(a), 12(a), and 13(a) (i.e., the end of the backpay periods for Ricky Chuter, Andy Scara, and Joseph Versiga, respectively), as well as paragraph 15 as it pertains to Frank J. Shrader and David L. Wozencraft, none of which allegations now present matters in dispute.

The Motion for Summary Judgment is denied in all other respects.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 15 for the purposes of issuing a notice of hearing and scheduling a hearing before an administrative law judge, for the taking of evidence concerning the issues of interim earnings and expenses, and backpay cutoff dates as specified above.

IT IS FURTHER ORDERED that the judge shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules shall be applicable.

Dated, Washington, D.C. May 16, 2001

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

Dennis P. Walsh Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD